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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/036,677

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05/20/2004

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EXAMINER

BUI, KIEU OANH T

ART UNIT

PAPER NUMBER

2611

12

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,677

Applicant(s)

SWIX ET AL.

Examiner

KIEU-OANH T BUI

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14 and 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6&8</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

1. Claims 2 and 15 were cancelled and new claims 21-22 were added in the amendment dated 1/6/04. Pending claims are now claims 1, 3-14, and 16-22.

Response to Arguments

2. Applicant's arguments filed on 1/6/04 have been fully considered but they are not persuasive. Please refer to the following detailed office action for supportive reasons of the Examiner's disagree statements on each newly amended limitation and the applicant's arguments.

Claim Rejections – 35 USC 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless –
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

4. Claims 1, 3, 5, 7, and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Grossman (U.S. Patent PUB No. 2002/0032906 A1).

Regarding claim 1, Grossman discloses “a method for evaluating the performance of a viewer watching a television programming stream”, i.e., the information delivery system monitors and evaluates a viewer watching as the viewer chooses to watch a television promotional program stream from an advertiser (page 1, section 0012; and page 2/section 0024

for system of Figure 6 can be any system of satellite television systems with bi-directional digital communications, which refers to the television programming stream), comprising the steps of: “prompting the viewer during the television programming stream to provide an indicated response to an event within an indicated time period”, i.e., a television program broadcasted to the viewer via cable set top boxes or satellite television systems for digital communications (page 2, section 0024), wherein television programming contains streaming video delivered to the viewer (page 2, section 0025) and the viewer has a time period to response to an event offered as the prompting from the advertiser (page 3, section 0032-0033 for time-scheduled activities and special offers, and Fig. 2a for the routine process to determine whether the viewer select any choice within the offer time period); “detecting the indicated response to the event; measuring a response time of the indicated response to the event, wherein the response time is the time between the time which event occurred and when the viewer provided the indicated response; evaluating viewer performance based upon the response time; and providing an incentive to the viewer based upon the viewer’s performance”, i.e., the system can detect and track the viewer’s response in real-time, and evaluating viewer performance based upon the response time by rewarding the viewer accordingly, for instance, right after the viewer performs the viewing of a streaming video program or commercial, a survey is offering to the viewer and after the viewer completes the survey—meaning the viewer’s response to the survey—an incentive is provided to the viewer as reward points; and the viewer’s response is not limited to the survey but also to viewing commercial facts, e-mailing a friend about the commercial, ordering the advertised product or participating in other promotions (page 4, sections 0041 & 0042 & 0045).

(Claim 2 was cancelled).

As for claim 3, in view of claim 1, Grossman further inherently discloses “wherein the event comprises an occurrence of audio/visual content broadcast to the viewer during the television programming stream”, i.e., television programming contains audio/video content broadcasted to the viewer from cable television system or satellite television system in digital communications comprising video streaming including (understood) audio (page 1, section 0012; page 2, section 0024 & 0025; and page 4, section 0041).

As for claim 5, in view of claim 1, Grossman further discloses “comprising creating a viewer action's log from the indicated response and the response time”, i.e., viewer profile and viewer's action log for viewer's responses and the response time are created and kept at the administration system (as illustrated in Fig. 1 at the Administration for community management consisting of member activity monitoring, profile administration and Agency Services with accounting/billing; and Fig. 5 with viewer profiles, viewer history, commercial viewing history with prime channel etc. with date/time and scheduled time are tracked, see page 3, section 0032 & 0034; page 4, sections 0041, 0042, 0045; and page 5, section 0053 as a good example for this concern).

As for claim 6, in further view of claim 5 above, Grossman further discloses “comprising comparing the viewer's action log to a known sequence of events”, i.e., the system keeps track the number of times the viewer access to a commercial program (page 4, section 0047) and a known sequence of events, for instance, the one hundredth viewer of a commercial program can be tracked and awarded with prizes (page 5, section 0053).

As for claim 7, in view of claim 1, Grossman further discloses “wherein the television programming stream comprises an advertisement”, i.e., television programming stream containing digital video streaming including promotion program or commercial or an advertisement (page 1/section 0012 and page 2/section 0025).

As for claim 10, in further view of claim 1 above, Grossman further discloses “wherein the incentive comprises at least one of: an award, a coupon, a discount, and a prize” (page 3/section 0023 and page 5/section 0053).

As for claim 11, in view of claim 1, Grossman further discloses “comprising transmitting the indicated response and the response time to a data-center”, i.e., viewer profile and viewer’s action log for viewer’s responses and the response time are transmitted or collected and kept at the administration system regarding as a data center (Figs. 5-6, and page 4/section 0042).

As for claim 12, in view of claim 1 and the Objection above, Grossman further discloses “wherein the evaluating performance step comprises instant feedback to the viewer”, i.e., an instant reward as a feedback is provided to the viewer (page 4/sections 0041 & 0042).

Claim Rejections - 35 USC 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grossman (U.S. Patent Pub No. 2002/0032906 A1) in view of Trewitt et al. (U.S. Patent No. 6,134,531).

Regarding claim 4, in view of claim 1, Grossman does not further include the step of “time-stamping the indicated response to the event”; however, in a same environment of a technique of collecting the viewer’s response in exchange for a reward, Trewitt teaches that a response from the viewer/user can be time-stamped accordingly and accurately for the synchronization between the system and the viewer (Fig. 6, col. 4/lines 52-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman’s system with Trewitt’s time-stamping technique in order to synchronizing the audience or the viewer’s interactions to the broadcast program segments accordingly and accurately. The motivation for doing this is to offer accurately correlate reactions to specific program segments of the program so that variations of the reactions or responses over time can be taken into consideration for other purposes, for instance, rewarding correctly to whom at what time, as suggested by Trewitt (see col. 1/lines 20-35, and col. 1/line 64 to col. 2/line 5).

6. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossman (U.S. Patent Pub No. 2002/0032906 A1) in view of Rosser (U.S. Patent No. 6,446,261 B1).

As for claim 8, in view of claim 1 above, Grossman does not further include “wherein the indicated response to the event is provided by the viewer actuating a pushbutton key on a set-top box remote control unit which transmits an encoded signal to a set top box when the viewer identifies the occurrence of audio/visual content”; however, Rosser teaches to have an exact technique as Rosser’s set top box receives and transmits encoded television signals using a remote controller 71 (col. 8/line 56 to col. 9/line 30 for programs in the form of encoded signals

are handled at the viewer usage profile of the set top box; and col. 13/lines 13-48 as a video feed with an advertisement can be encoded).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman's system with a set top box as one of Rosser in order to handle encoded signals to the set top box as the viewer identifies the occurrence of audio/video content and selects the suitable video/audio stream using the remote controller 71 as suggested by Rosser (Fig. 2, and col. 7/line 59 to col. 8/line 18).

As for claim 9, in further view of claim 8, Grossman does not further include "wherein the set-top box is operable for monitoring viewing habits and actions, collecting information, and receiving encoded television signals"; however, Rosser teaches to have an exact technique as Rosser's set top box can monitor, collect and gather a viewer's habits and other information at the set top box, and it handles encoded television signals (Fig. 2/item 74 for a viewer usage profile, col. 3/line 45 to col. 4/line 14 and col. 7/line 45 to col. 8/line 38 for viewer profile; and col. 8/line 56 to col. 9/line 30 for programs in the form of encoded signals are received at the viewer usage profile of the set top box). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman's system with a set top box as one of Rosser in order to monitor, collect and gather the viewer's information or profile at the set top box for the system to determine on better and appropriately targeting advertisements of product or service based on the viewer's preference as suggested by Rosser (col. 3/line 63 to col. 4/line 30).

7. Claims 13-14, and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossman (U.S. Patent Pub No. 2002/0032906 A1) in view of Trewitt et al. (U.S. Patent 6,134,531) and Rosser (U.S. Patent No. 6,446,261 B1).

Regarding claim 13, Grossman discloses “a media delivery device for evaluating a viewer watching programming”, i.e., the information delivery device monitors and evaluates a viewer watching as the viewer chooses to watch a promotional program from an advertiser (page 1, section 0012), comprising “a decoder operable for decoding broadcast media programming into the media delivery device, wherein the broadcast media programming comprises an occurrence of audio/visual cues”, i.e., a cable set top box serves as a decoder for decoding digital streams from the broadcast media (Grossman, page 2/section 0024, and page 4/section 0041 for stream video as an occurrence of audio/visual cues); and “evaluating the viewer's response and the response time by comparing the viewer's response and the response time against any known sequence of events, wherein an incentive is provided to the viewer based upon the viewer's response and the response time” i.e., the control system keeps track the number of times the viewer access to a commercial program (page 4, section 0047) and a known sequence of events, for instance, the one hundredth viewer of a commercial program can be tracked and awarded with prizes (page 5, section 0053); furthermore, for instance, right after the viewer performs the viewing of a streaming video program or commercial, a survey is offering to the viewer and after the viewer completes the survey (as the response time)—meaning the viewer's response to the survey—an incentive is provided to the viewer as reward points; and the viewer's response is not limited to the survey but also to viewing commercial facts, e-mailing a friend about the

commercial, ordering the advertised product or participating in other promotions (page 4, sections 0041 & 0042 & 0045).

Grossman does not further include “a timed response monitoring module operable for measuring a response time of the viewer's response”; however, in a same environment of a technique of collecting the viewer's response in exchange for a reward, Trewitt teaches that a response from the viewer/user can be time-stamped accordingly and accurately for the synchronization between the system and the viewer (Fig. 6, col. 4/lines 52-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman's system with Trewitt's time-stamping technique by placing that time-stamp device within a timed response monitoring module in order to synchronizing the audience or the viewer's interactions to the broadcast program segments accordingly and accurately. The motivation for doing this is to offer accurately correlate reactions to specific program segments of the program so that variations of the reactions or responses over time can be taken into consideration for other purposes, for instance, rewarding correctly to whom at what time, as suggested by Trewitt (see col. 1/lines 20-35, and col. 1/line 64 to col. 2/line 5).

Grossman does not further address that the step of evaluating is operated by “a processor” and the step of “a viewer action's module operable for detecting a viewer's response to the occurrence of audio/visual cues”; however, Rosser teaches to have an exact technique as Rosser's set top box includes a processor for operating (Fig. 4/item 146) in monitoring, collecting and gathering a viewer's habits and other information at the set top box and including viewer action's module 170 for storing user profile (Fig. 4/item 170 for a viewer usage profile, col. 3/line 45 to col. 4/line 14 and col. 7/line 45 to col. 8/line 38 for viewer profile). Therefore, it

would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman's system with a set top box as one of Rosser in order to operate with a processor, and it can monitor, collect and gather the viewer's information or profile at the set top box within the viewer action's module or user profile 170 for the system to determine on better and appropriately targeting advertisements of product or service based on the viewer's preference as suggested by Rosser (col. 3/line 63 to col. 4/line 30).

As for claim 14, in view of claim 13, Rosser further discloses comprising: "a network connection operable for transmitting encoded signals between the media delivery device and an external network", i.e., a modem 138 or cable modem 140 or tuner 142 or a decoder 144 for network connections to external network (Fig. 4, and col. 1/line 65 to col. 2/line 8 for the Internet network connection); and the step of "wherein the media delivery device receives prompts from the external network, and the external network receives notification for the viewer's response and the response time" is taught by Grossman, i.e., a television program broadcasted to the viewer via cable set top boxes or satellite television systems for digital communications (page 2, section 0024), wherein television programming contains streaming video delivered to the viewer (page 2, section 0025) and the viewer has a time period to response to an event offered as the prompting from the advertiser (page 3, section 0032-0033 for time-scheduled activities and special offers, and Fig. 2a for the routine process to determine whether the viewer select any choice within the offer time period).

(Claim 15 was cancelled).

As for claim 16, in view of claim 13 above, Grossman further discloses “wherein the media programming comprises an advertisement””, i.e., television programming stream containing digital video streaming including promotion program or commercial or an advertisement (page 1/section 0012 and page 2/section 0025).

As for claim 17, in view of claim 13 above, Grossman does not address “wherein the viewer's response to the occurrence of audio/visual cues is provided by the viewer actuating a pushbutton key on a set-top box remote control unit which transmits an encoded signal when the viewer identifies the occurrence of audio/visual cues”; however, Rosser teaches to have an exact technique as Rosser's set top box receives and transmits encoded television signals using a remote controller 71 (col. 8/line 56 to col. 9/line 30 for programs in the form of encoded signals are handled at the viewer usage profile of the set top box; and col. 13/lines 13-48 as a video feed with an advertisement can be encoded). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman's system with a set top box as one of Rosser in order to handle encoded signals at the set top box as the viewer identifies the occurrence of audio/video stream and selects the suitable video/audio stream using the remote controller 71 as suggested by Rosser (Fig. 2, and col. 7/line 59 to col. 8/line 18).

As for claim 18, in view of claim 17, Grossman does not address “wherein the set-top box is operable for monitoring viewing habits and actions, collecting information, and receiving encoded television signals”; however, Rosser teaches to have an exact technique as Rosser's set top box can monitor, collect and gather a viewer's habits and other information at the set top box, and it handles encoded television signals (Fig. 2/item 74 for a viewer usage profile, col. 3/line 45 to col. 4/line 14 and col. 7/line 45 to col. 8/line 38 for viewer profile; and col. 8/line 56

to col. 9/line 30 for programs in the form of encoded signals are received at the viewer usage profile of the set top box). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grossman's system with a set top box as one of Rosser in order to monitor, collect and gather the viewer's information or profile at the set top box for the system to determine on better and appropriately targeting advertisements of product or service based on the viewer's preference as suggested by Rosser (col. 3/line 63 to col. 4/line 30).

Regarding claim 19, the combination of Grossman, Trewitt and Rosser teaches "a method for providing an incentive to a television viewer, comprising the steps of: inserting an occurrence of an audio/visual cue into a television broadcasting stream; receiving an indicated response from the television viewer to the occurrence of the audio/visual cue; time-stamping the indicated response; comparing the time-stamped indicated response to a known sequence of events; and rewarding viewer behavior based upon the comparison of the time-stamped indicated response to the known sequence of events" (see the Examiner's discussion in claim 13).

As for claim 20, in view of claim 19, Grossman further discloses "wherein the reward comprises an incentive, a discount, a coupon, and a prize" (page 3/section 0023 and page 5/section 0053).

As for claim 21, the combination of Grossman, Trewitt and Rosser teaches the steps of "inserting an occurrence of a second audio/visual cue into the television broadcasting stream; receiving a second indicated response from the television viewer to the occurrence of the second audio/visual cue; time- stamping the second indicated response; comparing the second time-stamped indicated response to the known sequence of events; and wherein the act of rewarding

the viewer behavior is based upon the first and second comparison acts” (see the Examiner’s discussion in claim 13 with the inserting an occurrence of a second audio/visual cue into the television broadcasting stream of Grossman, as described in the process of Fig. 3 as more than one promotion is offered and an additional promotion can be regarded as a second audio/visual cue and also the comparison step as if the viewer has enough reward points by completing a number of measurable parameters (page 4/section 0045) for redeeming a particular reward in the Reward Gallery (page 4, section 0050); and together with the time-stamping technique of Trewitt as discussed earlier).

As for claim 22, Grossman further suggests “receiving a signal from the viewer indicating a desire to participate in the viewer evaluation process”, i.e., by registering to the system with a user login and password, the viewer indicates that the viewer wants to participate in the viewer evaluation process for rewarding upon the viewer’s performance (page 2/section 0028 & 0029).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krista Kieu-Oanh Bui whose telephone number is (703) 305-0095. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:30 PM, with alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



VIVEK SRIVASTAVA
PRIMARY EXAMINER

Krista Bui
Art Unit 2611
April 13, 2004